

## REMARKS

Claims 53-98 are pending; claims 70-75 and 93-98 have been withdrawn by the present amendment; claims 53, 57, 58, 63-65, 76, 81 and 87 have been amended by the present amendment.

### ***Elections/Restrictions***

Applicant affirms the election without traverse to prosecute Invention I, claims 53-69, 76-92, Figures 9a - 14d, 15a-17 and 36a-36f. Claims 70-75 and 93-98 have been withdrawn.

### ***Double Patenting***

Claims 53, 54, 58, 61, 63, 64, 66, 67, 68, 69, 86, 77, 89, 90, 91, 92, 81, 82, 87 and 84 stand rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1-16, 18-21 and 23-25 of USPN 7,051,486. Applicant hereby submits a terminal disclaimer with regard to USPN 7,051,486. The present application and USPN 7,051,486 are commonly owned.

Accordingly, the Examiner is respectfully requested to withdraw the double patenting rejection.

Further the Examiner requested that applicants address certain co-pending applications or issued patents. In order to provide a clear line of demarcation, below is a listing of each application/patent the Examiner listed, together with a comment from applicant:

**11/822,688** - applicant reserves the right to amend the scope of the claim in this application.

**10/768,677** - the present application at least recites that "*said locking strip adapted for connecting the floorboard with the essentially identical floorboard by at least inward angling, such that when the second edge is pressed against an upper part of the first edge and is then angled down, the locking element can enter the locking groove.*" This is not claimed in the claims of 10/768,677.

**10/933,539** - the present application at least recites that "*said locking strip is a separate part which is mechanically fixed to the floorboard in said horizontal direction and a vertical direction, wherein said locking strip is mechanically fixed to the*

*floorboard at a joint by snapping-in, inward angling, or frictional forces."* This is not claimed in the claims of 10/933,539.

**10/925,924** - the present application at least recites that "*said locking strip is a separate part which is mechanically fixed to the floorboard in said horizontal direction and a vertical direction, wherein said locking strip is mechanically fixed to the floorboard at a joint by snapping-in, inward angling, or frictional forces."* This is not claimed in the claims of 10/925,924.

**10/413,478** - applicant has filed a terminal disclaimer with regard to this patent.

**10/043,149** - the present application at least recites that "*said locking strip is a separate part which is mechanically fixed to the floorboard in said horizontal direction and a vertical direction, wherein said locking strip is mechanically fixed to the floorboard at a joint by snapping-in, inward angling, or frictional forces."* This is not claimed in the claims of 10/043,149.

**10/256,167** - the present application at least recites that "*said locking strip is a separate part which is mechanically fixed to the floorboard in said horizontal direction and a vertical direction, wherein said locking strip is mechanically fixed to the floorboard at a joint by snapping-in, inward angling, or frictional forces."* This is not claimed in the claims of 10/256,167.

**10/043,424** - the present application at least recites that "*said locking strip is a separate part which is mechanically fixed to the floorboard in said horizontal direction and a vertical direction, wherein said locking strip is mechanically fixed to the floorboard at a joint by snapping-in, inward angling, or frictional forces."* This is not claimed in the claims of 10/043,424.

**09/954,066** - the present application at least recites that "*said locking strip is a separate part which is mechanically fixed to the floorboard in said horizontal direction and a vertical direction, wherein said locking strip is mechanically fixed to the floorboard at a joint by snapping-in, inward angling, or frictional forces."* This is not claimed in the claims of 09/954,066.

**35 USC § 112, Second Paragraph**

Claim 63-65 stand rejected under 35 USC § 112, second paragraph, as having insufficient antecedent basis. Applicants have amended claims 63-65 to depend from claim 62, which remedies the antecedent basis issue.

Claims 64 and 87 stand rejected under 35 USC § 112, second paragraph, as being indefinite for the use of "and/or." Applicant respectfully asserts that the use of "and/or" is not indefinite. The Examiner has cited MPEP § 2173.05(d) for support of the rejection - however, this section refers to the use of "such as" or "for example" which are not relevant to the applicant's use of and/or. However, to expedite prosecution, applicant has amended claims 64 and 87 to replace 'and/or' with "or."

Withdrawal of the 35 USC § 112, second paragraph rejection is respectfully requested.

**35 USC § 102**

Claims 53-60, 66, 76-83 and 89 stand rejected under 35 USC § 102(b) as being anticipated by Martensson (USPN 6,763,643). Applicant respectfully traverses this rejection.

Claims 53 and 76 each at least recite that "*said locking strip adapted for connecting the floorboard with the essentially identical floorboard by at least inward angling, such that when the second edge is pressed against an upper part of the first edge and is then angled down, the locking element can enter the locking groove.*"

At least one deficiency of the disclosure of Martensson, is that the Martensson floorboards do not have a structure according to the claimed combination that is capable of the claimed inward angling. It is quite clear from even a casual review of Figure 2c of Martensson that the disclosed system does not have a structure that is capable of the claimed inward angling. Instead, to lock floorboards with the system of Figure 2c, the floorboards must be slid onto the joining profile 10 from the side. For example, when the joining profile 10 of Figure 3 or 4 is made in the manner of the embodiment in Figure 2c, the only manner of locking the floorboards with the joining profile 10 will be to slide the floorboard in from the side. Martensson discusses this sliding, disclosing that "The reason why the fourth cheek is provided with only one lip 11 is that the last floor element 1 is joined with such a joining profile

10 must be slid in from the side in cases where the floor elements 1 are provided with a vertical guiding as shown in the FIGS. 2a-c." Column 8, lines 6-11.

Accordingly, Martensson does not teach or suggest the presently claimed invention. The Examiner is respectfully requested to withdraw the rejection based on Martensson.

**35 USC § 103 - Martensson in view of Laramore**

Claims 61-63 and 84-86 stand rejected under 35 USC § 103(a) as being unpatentable over Martensson in view of Laramore (USPN 4,512,131). Applicant traverses this rejection.

As discussed above, Martensson is at least deficient in that Martensson does not disclose a system with a structure according to the claimed combination that is capable of the claimed inward angling. Laramore does not and cannot remedy this deficiency.

Further, with regard to claims 62 and 85, the Examiner relies upon Laramore to modify Martensson to provide a locking strip that is made of essentially wood-based material. And, with regard to claims 63 and 86, the Examiner relies upon Laramore to modify Martensson to provide a locking strip is made of pure wood, particle board, plywood, HDF, MDF or compact laminate. However, Martensson **teaches away** from a locking strip that is made of essentially wood-based material. Accordingly, one skilled in the art would not modify Martensson in the manner suggested by the Examiner.

Martensson directly criticizes prior art systems that rely on wood locking strips. For example, Martensson discloses that "*The invention according to WO 97/47834 presumes a certain amount of resilient properties in the core material. The material normally used is not very suitable if a resilient property is desired. MDF (medium density fibre board) or HDF (high density fibre board) should according to WO 97/47834 be suitable as core material. The resilient properties of these materials are however, rather poor, whereby the risk for crack formation, parallel to the top surface, ought to be great.*" Col 2, ll. 48-56. Further, Martensson recites that "*These parts must, of manufacturing technological reasons, be made of fibre board, particle board or thin aluminium sheets which all are easy to either break or deform. This will normally lead to that the floor elements has to be rejected. Joining profiles according*

*to the present invention can be made of a multitude of materials and by means of many different manufacturing methods. Among the most suitable methods can, however, be mentioned injection moulding for the plus-shaped embodiment of a joining profile and extrusion for the extended embodiment of joining profile. Suitable materials are thermoplastic materials such as poly olefins, polystyrene, polyvinyl chloride or acrylnitril-butadiene-styrene-copolymer. These can suitably be filled with for example wood powder or lime in order to increase the dimension stability as well as increasing the adhesion when being glued."* Column 4, line 60 - column 5, line 9.

Accordingly, one skilled in the art would not modify Martensson to have a locking strip that is made of essentially wood-based material. And, one skilled in the art would not modify Martensson to have a locking strip that is made of pure wood, particle board, plywood, HDF, MDF or compact laminate.

The rejection of Martensson in view of Laramore is respectfully requested to be withdrawn.

**35 USC § 103 - Martensson in view of Moriau**

Claims 64 and 87 stand rejected under 35 USC § 103(a) as being unpatentable over Martensson in view of Moriau (USPN 7,040,068). Applicant traverses this rejection.

As discussed above, Martensson is at least deficient in that Martensson does not disclose a system with a structure according to the claimed combination that is capable of the claimed inward angling. Moriau does not and cannot remedy this deficiency.

Further, as discussed above, Martensson **teaches away** from a locking strip that is made of essentially wood-based material. Accordingly, one skilled in the art would not modify Martensson in the manner suggested by the Examiner.

The rejection of Martensson in view of Moriau is respectfully requested to be withdrawn.

**35 USC § 103 - Martensson in view of Haid**

Claims 65 and 88 stand rejected under 35 USC § 103(a) as being unpatentable over Martensson in view of Haid (USPN 4,599,841). Applicant traverses this rejection.

As discussed above, Martensson is at least deficient in that Martensson does not disclose a system with a structure according to the claimed combination that is capable of the claimed inward angling. Haid does not and cannot remedy this deficiency.

Further, as discussed above, Martensson ***teaches away*** from a locking strip that is made of essentially wood-based material. Accordingly, one skilled in the art would not modify Martensson in the manner suggested by the Examiner.

The rejection of Martensson in view of Haid is respectfully requested to be withdrawn.

### ***35 USC § 103 - Martensson in view of Imus***

Claims 64 and 87 stand rejected under 35 USC § 103(a) as being unpatentable over Martensson in view of Imus (USPN 6,901,709). Applicant traverses this rejection.

As discussed above, Martensson is at least deficient in that Martensson does not disclose a system with a structure according to the claimed combination that is capable of the claimed inward angling. Imus does not and cannot remedy this deficiency.

Further, one skilled in the art would not modify Martensson such that a first set of connecting means is arranged on a short side of the floorboard and a second set of connecting means is arranged on a long side of the floorboard, *wherein the first set of connecting means differs from the second set of connecting means in terms of material property or material composition*.

In stark contrast, Martensson teaches that the connecting means (alleged joining profile 10) is provided as the same compositions/properties on all four sides. This is quite evident because of the joining profiles shown in Figures 3, 4, 5 and 6. The Examiner is reminded that Figure 2c is simply a cross-sectional view of the joining profiles shown in Figures 3, 4, 5 and 6. Thus, with the joining profiles that are proposed by Martensson, one skilled in the art would have no reason to modify a long side to have a different material property or material composition from a short side.

The rejection of Martensson in view of Imus is respectfully requested to be withdrawn.

***Conclusion***

The Examiner is respectfully requested to enter the foregoing amendments prior to examination of the application. In the event that there are any questions, the Examiner is respectfully encouraged to contact the undersigned.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

A handwritten signature in black ink that reads "T.D. Boone". The signature is stylized, with the first letters of the first and last names being large and prominent.

Date 29 October 2008

By: \_\_\_\_\_

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